

Exhibit 12

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TZVI WEISS, et al.,

Plaintiffs,

vs.

Case No.

05-CV-4622 (DLI) (MDG)

NATIONAL WESTMINSTER

BANK, PLC,

Defendant.

-----)

NATAN APPLEBAUM, et al.,

Plaintiffs,

vs.

Case No.

07-CV-916 (DLI) (MDG)

NATIONAL WESTMINSTER

BANK, PLC,

Respondent.

-----)

Friday, June 10, 2011

9:40 a.m.

Deposition of BRIAN MICHAEL

JENKINS, held at the offices of Osen LLC, 345
Seventh Avenue, New York, New York, pursuant
to Notice, before Shauna Stoltz-Laurie, a
Registered Professional Reporter, Certified
Realtime Reporter and Notary Public of the
State of New York.

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A P P E A R A N C E S:

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ALSO PRESENT:

MARK GRUBE (Cleary Gottlieb law clerk)

ANDRA PRUTU (Cleary Gottlieb law clerk)

1 Jenkins

2 to Hamas. As I say, the general issue is a 12:35:40
3 phenomenon of -- of Palestinian groups. 12:35:43

4 MR. OSEN: Okay. We'll mark as 12:35:51
5 Exhibit 6 the ITIC bulletin from January 12:35:53
6 3rd, 2008. 12:36:01

7 ([Jenkins] Exhibit 6, ITIC 1/3/2008 12:36:01
8 Bulletin, marked for identification, as 12:36:01
9 of this date.) 12:36:01

10 (Handing). 12:36:52

11 THE WITNESS: Thank you. 12:36:52

12 Q. Mr. Jenkins, is Exhibit 6 the same 12:36:52
13 report which you referred to in footnote 38? 12:37:02

14 A. Give me a moment, please -- 12:37:09

15 Q. Sure. 12:37:11

16 A. -- to -- to look at it. (Reading). 12:37:12

17 Yes. Okay? 12:38:39

18 Q. Okay. 12:38:40

19 I'd like you to turn to page two 12:38:40

20 and specifically to footnote three at the 12:38:44

21 bottom of the page. It's my own view that 12:38:47

22 footnote three actually contains a typo, so 12:39:00

23 I'll read it as I think it's supposed to be 12:39:04

24 read, as "so far" as opposed to "for far. 12:39:06

25 A. Agreed. 12:39:10

1 Jenkins

2 Q. Supposition on my part. "So far it 12:39:10
3 is unclear which organization he belonged to. 12:39:13
4 According to the Palestinian media, he was a 12:39:16
5 member of the PIJ Jerusalem Battalion but 12:39:19
6 "according to another version, he belonged to 12:39:24
7 the Hamas' Izzedine al-Qassam Brigades." Do 12:39:29
8 you see that? 12:39:31

9 A. I do. 12:39:31

10 Q. Okay. This report was issued on 12:39:38
11 January 3rd, 2008, correct? 12:39:39

12 A. Yes. 12:39:48

13 Q. And the shooting attack took place 12:39:48
14 on December 28th, 2007, correct? 12:39:51

15 A. Yes. 12:39:55

16 Q. Now, if I was better at math, I 12:39:55
17 probably wouldn't be sitting in this room, 12:40:00
18 but my calculation is that's about a week 12:40:02
19 later or within a week of the shooting attack 12:40:05
20 itself. Is that fair? 12:40:10

21 A. Yes. 12:40:11

22 Q. Okay. There were three shooters 12:40:12
23 involved, according to the ITIC report -- 12:40:17

24 A. Yes. 12:40:22

25 Q. -- is that correct? 12:40:24

1 Jenkins

2 Okay. Two of them were identified 12:40:25
3 as Fatah members; that's correct? 12:40:28

4 A. Yes. 12:40:33

5 Q. And the third one, at least as of 12:40:35
6 January 3rd, 2008 it was unclear whether he 12:40:38
7 belonged to Hamas or Islamic Jihad or some 12:40:44
8 other Islamic organization; is that fair? 12:40:48

9 A. That, well, the footnote says 12:40:52
10 "According to the Palestinian media" -- 12:40:54

11 Q. Right. 12:40:56

12 A. -- "he was a member of Palestine 12:40:57
13 Islamic Jihad Jerusalem Battalions or the 12:41:03
14 Hamas Qassam Brigade." That's according to 12:41:07
15 the Palestinian media. That's what the 12:41:09
16 footnote says. 12:41:12

17 Q. Right. 12:41:12

18 Now -- 12:41:13

19 A. But that doesn't mean that he was. 12:41:13
20 I mean that's a Palestinian newspaper 12:41:16
21 account. 12:41:18

22 Q. Sure. 12:41:18

23 And the question I have, though, is 12:41:18
24 I suppose it's possible, you would agree, 12:41:23
25 that the third shooter was a member of Fatah. 12:41:27

1 Jenkins

2 A. Beg pardon? Say that again? 12:41:33

3 Q. Would you agree that it's possible 12:41:34
4 that the third shooter was a member of Fatah? 12:41:37

5 A. It is a possibility. 12:41:41

6 Q. And it's also possible, would you 12:41:44
7 agree, that he was a member of Hamas? 12:41:45

8 A. It is a possibility. 12:41:48

9 Q. And the same's also true of 12:41:49
10 Palestinian Islamic Jihad. 12:41:52

11 A. Also a possibility. 12:41:55

12 Q. So is it fair to say that in the 12:41:57
13 case of Wadi Telem at least two of the three 12:42:03
14 declared groups who claimed responsibility or 12:42:10
15 allegedly claimed responsibility could have 12:42:15
16 been in whole or in part responsible? 12:42:20

17 A. No. I -- I -- I wouldn't be able 12:42:23
18 to say that, because again we come back to 12:42:26
19 the issue of, first of all, we're talking 12:42:28
20 about what the Palestinian media says, and I 12:42:30
21 don't necessarily accept them as a definitive 12:42:33
22 source. Media say a lot of things about 12:42:36
23 these. 2ne, if we have an individual of 12:42:40
24 doubtful membership, it could be another case 12:42:47
25 -- it could be, because you're talking about 12:42:50

1 Jenkins

2 archives Web pages from the Internet and 12:53:04
3 stores them in a -- in a form of archival 12:53:08
4 form. 12:53:12

5 A. Yes. 12:53:13

6 Q. The URL from which this was taken 12:53:14
7 indicates, after the origin at WebArchive, 12:53:19
8 that it comes from www Palestine dash info 12:53:24
9 dot info -- 12:53:30

10 A. Correct. 12:53:31

11 Q. -- et cetera. 12:53:32

12 Do you recognize that URL to be one 12:53:33
13 of Hamas's official or quasi-official Web 12:53:35
14 sites? 12:53:35

15 MR. LUFT: I'm also going to note 12:53:41
16 an objection to Mr. Osen's description 12:53:42
17 of what WebArchive is. This document -- 12:53:44

18 A. I -- 12:53:44

19 MR. LUFT: -- is more complete. 12:53:48

20 A. (Reading) That's neither here nor 12:53:49
21 there on that, but I'll assume that it is. 12:53:55
22 And it's -- and it's -- let me see what I've 12:53:59
23 got here. WebArchive. (Reading). 12:54:04

24 Yes. 12:54:10

25 Q. Yes, you recognize Palestine dash 12:54:12

1 Jenkins

2 info -- 12:54:15

3 A. Yes. 12:54:15

4 Q. -- dot info as a -- one of Hamas's 12:54:16
5 websites? 12:54:19

6 A. I assume, yes. 12:54:19

7 Q. Okay. Now, in performing your 12:54:20
8 technical review, which included citing -- 12:54:37

9 (Telephone interruption.) 12:54:43

10 Q. -- to the April 10, 2002 attack, 12:54:46
11 did you make any effort to determine 12:54:49
12 independently whether Hamas had in fact 12:54:56
13 claimed responsibility for this attack, apart 12:55:01
14 from citing to secondary sources? 12:55:05

15 A. No, only in -- only in -- only 12:55:08
16 what's listed in the footnotes here. 12:55:10

17 Q. Based on having now reviewed the 12:55:16
18 translation of the excerpt from Hamas's 12:55:22
19 website, do you still believe that it is 12:55:25
20 accurate to state, as did the Chicago Tribune 12:55:30
21 or the AP, that Hamas had officially taken 12:55:37
22 responsibility for this attack? 12:55:41

23 MR. LUFT: Objection, misleading, 12:55:43
24 foundation. 12:55:45

25 And I again call to the fact that 12:55:45